

REMARKS

Applicants and their representatives wish to extend their appreciation to Examiner Robinson for the very helpful discussions regarding this application and its related applications. During these discussions, Applicants' representatives informed the Examiner that the claims in some of the related applications had been amended to recite that "Therapeutic protein X" is selected from one of the proteins set forth in Table 1 of their respective specifications. However, Applicants later recognized that Table 1 in each application have some overlapping proteins. The Examiner then indicated that a restriction would be required in each application among the "Therapeutic protein X" set forth in Table 1. Applicants expressed their intention of amending the instant claims from recitation of "Therapeutic protein X" to "an interferon alpha protein," which is one of the proteins listed in Table 1 of the specification (see page 28). Accordingly, in this response, Applicants elect an "an interferon alpha protein." The Examiner is requested to make the restriction requirement of record. Applicants assert that the proteins set forth in Table 1 are independent and separately patentable, and that Applicants reserve the right to file divisional applications on the non-elected inventions.

Additionally, the Examiner had very kindly provided claims that she deemed allowable in related Application No. 09/833,118. The Examiner suggested that those claims be used as a template for the claims in the instant application in order to expedite prosecution. Accordingly, Applicants have amended claims 1-12 to mirror the claims provided by the Examiner in related Application No. 09/833,118.

In related Application No. 09/833,118, the Examiner had also rejoined claims that correspond to claims 26-29 of the instant application. In order to expedite rejoinder, Applicants have amended claim 26 in the instant application to correspond to claim 26 in Application No. 09/833,118. Claims 27-29 in Application No. 09/833,118 were rejoined in their original form and similarly, claims 27-29 in the instant application have not been amended. Applicants respectfully request that claims 26-29 be rejoined in the instant application.

In addition, Applicants have cancelled claims 30-50 and 60, which correspond to Group V of the restriction requirement dated August 26, 2003. The Examiner had indicated that she would rejoin Group V, which is directed to an albumin fusion protein comprising an interferon alpha protein. However, to prevent duplication of claims 1-21 currently under consideration, Applicants have cancelled the claims of Group V.

Applicants address each of the issues raised in the Office Action of November 4, 2003, below.

Provisional Statutory Double Patenting

Claims 1-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-21 of copending Application Nos. 09/833,117; 09/833,111; 09/833,118; 09/832,929; and 09/832,041.

Applicants have informed the Examiner that they will elect a single protein for "Therapeutic protein X" in each of the copending applications. Specifically, the following proteins have been elected in these copending applications:

| <u>Application No.</u> | <u>Therapeutic protein X</u> |
|------------------------|--|
| 09/833,117 | Interferon-beta (IFN-b) |
| 09/833,111 | Cerebus protein |
| 09/833,118 | Brain-derived neurotrophic factor (BDNF) |
| 09/832,929 | An antibody or antibody fragment that specifically binds HER2 |
| 09/832,041 | TIMP-1 |

The currently amended claims in the instant application are directed to an albumin fusion protein comprising an interferon alpha protein, which is not being claimed in any of these above copending applications. Therefore, withdrawal of the rejections is respectfully requested.

Claim Rejections - 35 USC § 102

Claims 1-21 are rejected under 35 U.S.C. 102(f) or 102(g) in view of copending Application Nos. 09/833,117; 09/833,111; 09/833,118; 09/832,929; and 09/832,041, because the Office contends that the claims in all of the copending applications have the same language, scope, wording and subject matter as those in the instant application and all of the applications have different inventive entity with common ownership. Applicants respectfully traverse.

As discussed above, the amended claims now recite an “interferon alpha protein.” Copending Application Nos. 09/833,117; 09/833,111; 09/833,118; 09/832,929; and 09/832,041 do not claim the same “interferon alpha protein” as in the instant

application. Therefore, the copending applications do not raise inventorship issues.

Withdrawal of the rejection is respectfully requested.

Claims 1-21 are also provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application Nos. 09/833,111; 09/832,929; 09/833,118; and 09/832,041. Applicants respectfully traverse.

Copending Application Nos. 09/833,111; 09/832,929; 09/833,118; and 09/832,041 do not disclose or claim the same "interferon alpha protein" as in the instant application. Therefore, the copending applications do not anticipate the instantly claimed invention. Withdrawal of the rejection is respectfully requested.

Claims 1-3, 5-10, 13-14 and 17-21 are rejected under 35 U.S.C. 102 (b) as being anticipated by WO 97/24445 ("Delta"), or its Korean equivalent, KR99076789.

The Office alleges that Delta discloses serum albumin fusion proteins comprising the sequence set forth in SEQ ID NO: 18 of the instant application and therefore anticipates the claimed invention. In particular, the Office alleges that Delta discloses a fusion of albumin and a growth hormone. As discussed above, the Office has interpreted "Therapeutic protein X" as encompassing any "polypeptide, antibody, peptide, fragments or variants thereof." See Office Action, page 11. However, the claims now recite "an interferon alpha protein." Delta does not teach or suggest an albumin fusion protein comprising "an interferon alpha protein." Thus, Delta does not anticipate the instant claims. Withdrawal of the rejection is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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